



UAA Justice Center  
UNIVERSITY of ALASKA ANCHORAGE

---

Scholarworks@UA — UAA Justice Center

---

November 1980

## Potentially Discriminatory Criminal Justice Agency Policies

John E. Angell

---

### ***Suggested citation***

Angell, John E. (1980). *Potentially Discriminatory Criminal Justice Agency Policies*. Report prepared for the Alaska Criminal Justice Planning Agency, Governor's Commission on the Administration of Justice. Anchorage, AK: Justice Center, University of Alaska Anchorage.

### ***Summary***

This report describes potential sources of discrimination in the Alaska criminal justice system related to agency policies and procedures. The study relied on policy and procedural manuals and other written materials describing operational practices and organizational and management information about criminal justice operations. The report identifies policy areas in law enforcement, the legal and judicial system, corrections, and systemwide which provide the highest potential for discrimination on the basis of race, sex, economic condition, or other characteristics.

POTENTIALLY DISCRIMINATORY  
CRIMINAL JUSTICE AGENCY POLICIES

Justice Center  
University of Alaska  
Anchorage, Alaska

John Angell

November 1980

JC 8006

Prepared under contract number 79-A024 for the Criminal Justice Planning Agency of the Governor's Commission on the Administration of Justice, State of Alaska, with funds provided by the Law Enforcement Assistance Administration, U. S. Department of Justice. Points of view or opinions stated in this document do not necessarily represent the official position or policies of the Criminal Justice Planning Agency or the U. S. Department of Justice.

### ACKNOWLEDGMENTS

Information for this project was provided by all the state-level, and several of the municipal, criminal justice agencies in Alaska. Officials of these agencies were very cooperative and supportive of the study. Without such assistance, it would have been impossible to complete this document.

A variety of people were involved in the collection and analysis of the policies and procedures. Those who contributed most significantly included Charles G. Anderson, Jr.; Kevin Bruce; Kimberly A. Kahler; Rickey J. McElfish; Dorothy M. Newman; James S. E. Opolot; Sharon Rafferty; Patrick G. Ross; Thomas E. Storey; and Denise D. Wike. Administrative and clerical activities were performed by Deirdre Ford, and Phyl Booth and Darline Creen of the Justice Center. Susan E. Knighton of the Alaska Criminal Justice Planning Agency provided overall project direction.

I am extremely grateful to each of these people. Without their diligent efforts the report could not have been completed. The shortcomings of the report are in spite of their best efforts, and entirely my responsibility.

John E. Angell  
Justice Center  
University of Alaska  
Anchorage

## SUMMARY

The Justice Center was responsible for analyzing the policies and procedures of Alaska's criminal justice agencies and identifying aspects of those policies and procedures where an "apparent probability" for improper discrimination exists. The observations derived from this process must be viewed as tenuous. They are not presented as conclusive facts, but rather as areas deserving of introspection and assessment by Alaska justice officials.

The following summarizes conclusions about the policies and practices which may be contributing to racial, sexual, or economic discrimination by agencies of the Alaska justice system:

### Systemwide Situations Which May Contribute to Discrimination

1. The absence of an established system or clearly defined processes for policy development and maintenance at either the systemwide or component agency level.
2. Agency practices which insulate policies from scrutiny by employees and citizens.
3. The absence of records of decision making precedents in some areas which have high anticipated and inconspicuous discriminatory consequences.
4. The absence, particularly in the legal component, of organized, systematic programs for teaching employees policies and appropriate decision making within policy guidelines.

5. The absence of written policies for the allocation of the state's criminal justice resources and services.
6. Uneven allocation and distribution of criminal justice resources and services which may have discriminatory consequences for minorities and the poor, particularly in the rural areas of the state.
7. Personnel policies and practices that may be keeping an equitable proportion of minorities and women from participating in the development of justice policies and procedures.

Police Policies and Procedures Which May Contribute to Discrimination

1. Operation manuals are not available to officers in some police departments.
2. Most policy and procedural manuals are outdated and do not reflect the present operational practices in most police agencies.
3. Aspects of personnel hiring, utilization and assignment practices.
4. Procedures related to identification, stopping and interviewing of suspicious persons.
5. Procedures related to decisions to warn, cite, or arrest violators.
6. Policies related to the use of force.

Prosecution, Public Defender and Court Policies and Procedures Which May Contribute to Discrimination

1. The procedures established for guiding judicial officers in bail practices and pretrial release of defendants.
2. The absence of prosecutorial or public defender guidelines for advising judges concerning pretrial release and bail.
3. The resource allocation policies which result in rural communities and defendants receiving less attention and service than given to urban areas.

4. The policies that result in the prosecution having more resources at its disposal than are provided the public defender.
5. The limitation of pretrial diversion to people in the Anchorage area.
6. The absence of formal policy concerning public defender obligations to maintain ongoing communication with clients.
7. Court policies and procedures concerning the people who are selected to serve on grand and trial juries and the location of hearings and trials.
8. The absence of policy concerning improper use of peremptory challenges.
9. Court policies and procedures concerning the location of grand juries and trials.

Corrections Policies and Procedures Which May Contribute to Discrimination

1. The policies concerning the allocation of correctional resources and services throughout the state.
2. Unchecked variations from the formal policies and procedure of the Division of Corrections.
3. The policy related to the confiscation and disposal of excess prisoner property.
4. Policies related to communication rights of arrestees being detained for trial.
5. Policies and procedures related to pre-sentence investigations and reporting.
6. Procedures for guiding classifications of sentenced prisoners.
7. Differences in institutional policies concerning prisoner rights to visitation, possession of cash, telephone use, educational opportunities, counseling and alcohol and drug programs.
8. Parole Board policies and practices in general.

## TABLE OF CONTENTS

ACKNOWLEDGMENTS . . . . .	i
SUMMARY . . . . .	ii
SECTION 1	
INTRODUCTION . . . . .	1
Methodology . . . . .	1
Organization of Report . . . . .	3
SECTION 2	
GENERAL JUSTICE SYSTEM . . . . .	4
Policy Development . . . . .	5
Deficiencies . . . . .	7
Personnel Preparation . . . . .	8
Conclusion . . . . .	9
Resource Use Policies . . . . .	10
General Allocation Issue . . . . .	10
Personnel . . . . .	13
Summary and Conclusions . . . . .	15
SECTION 3	
POLICE . . . . .	17
Policies and Procedures . . . . .	19
Personnel Utilization . . . . .	20
Male Orientation . . . . .	22
Field Interviews . . . . .	23
Warnings, Citations and Arrests . . . . .	27
Use of Force . . . . .	29
Conclusions . . . . .	34
SECTION 4	
LEGAL AND JUDICIAL . . . . .	36
Pretrial, Prosecution and Defense . . . . .	37
Prosecution and Defense . . . . .	40

LEGAL AND JUDICIAL (continued)

Judicial and Trial . . . . .	44
Jury Selection . . . . .	45
Jury and Trial Location . . . . .	48
Conclusions . . . . .	51

SECTION 5

CONFINEMENT AND CORRECTIONS . . . . .	53
General observations . . . . .	54
Pre-Sentence . . . . .	56
Post-Arrest Detention . . . . .	56
Pre-Sentence Investigations . . . . .	59
Classification . . . . .	60
Institutional . . . . .	62
Visitation Policies . . . . .	62
Possession of Money . . . . .	63
Telephone Privileges . . . . .	64
Education . . . . .	64
Counseling . . . . .	65
Alcohol and Drug Problems . . . . .	66
Conclusion . . . . .	66
Parole . . . . .	66
Conclusions . . . . .	70
APPENDIX A . . . . .	72



## SECTION 1

### INTRODUCTION

This project was organized to identify possible sources of discrimination in the Alaska criminal justice system. The Alaska Criminal Justice Planning Agency (CJPA) allocated the project responsibilities between the Cascade Research Center, Vancouver, Washington, and the Justice Center. Cascade Research was assigned responsibility for processing and analyzing statistical data available in justice agencies, and the Justice Center was directed to focus on matters related to agency policies and procedures. This report is a summary of conclusions reached as a result of the Justice Center's efforts.

#### Methodology

The Justice Center in conducting this study relied on written materials which described the operational practices and provided organizational and management information about criminal justice operations in Alaska. The organizational designs and the allocation of resources by state justice agencies were reviewed. A process network of decision making related to the handling of criminal cases by Alaska justice agencies was developed (Appendix A). Policy and procedural manuals and documents related to major decision points were sought from Alaska criminal justice agencies.

Those policy and procedural documents obtained were studied by persons working with the Justice Center. Inductive and deductive judgments about possible weaknesses and discriminatory consequences of the policies were made and subjected to group critiques. Ultimately, consensus was reached concerning significant conclusions that should be called to the attention of the Alaska criminal justice community.

The process used in this study was exploratory--an inherently subjective research approach. This approach is normally used for hypothesis generation. The validity of the conclusions reached are dependent on the accuracy of the understanding of the policies and procedures reviewed and the soundness of the reasoning about them--rather than on statistical data and the calculation of probabilities. Therefore, statements concerning cause and effect relationships may be more readily challengeable than are the statistically-based conclusions offered in the Cascade Report. This means in some cases alternative conclusions may be as reasonable as those developed in this report.

A serious complicating factor in this study was the dynamic nature of the agencies and policies being reviewed. Alaska justice administrators have responsibility for improving their agencies' operations, and we were frequently cautioned by agency employees that (1) efforts were being made to upgrade the existing formal policies, and (2)

existing policies and procedures do not in all cases provide an accurate picture of how agency personnel actually handle situations. Whether the result of normal administrative efforts to improve agency operations or stimulation by our inquiries, some of the policies and circumstances which are criticized in this report have been changed since we first reviewed them.

#### Organization of Report

The remainder of this report will be organized from the general to specific subject matter. Section 2 will address general systemwide policies and practices which have implications for discriminatory actions by justice officials and operations. Sections 3, 4 and 5 will discuss the specific component areas.

## SECTION 2

### GENERAL JUSTICE SYSTEM

Comprehensive statements concerning aspects of justice system operations which may have discriminatory consequences are obviously risky. There are, however, several areas where all encompassing statements and observations concerning policy weaknesses seem fair and reasonable. The observations about these areas have more relevancy to some components and agencies of the Alaska justice system than to others.

This study did not produce evidence of Alaska justice administrators deliberately designing or instituting policies for the purpose of unfairly discriminating against particular groupings or categories of people. Without exception, the justice officials who were interviewed espoused a philosophy of equality under law, and a commitment to operational policies and practices that would prevent improper and unfair discrimination. Most of these officials do, however, acknowledge the existence of some organizational policies and practices that may have differential and unfair consequences for different categories of people. Where such situations are recognized, the officials who are aware of them usually perceive the practices as either being beyond their control or as necessitated by a higher priority objec-

tive or requirement. In most cases, when viewed narrowly in the context of the reason for and circumstances surrounding their development, even discriminatory policies seemed rational. Such a contextual perspective at times produces myopia to a policy's impact on inconspicuous individuals and groups, or unanticipated consequences.

### Policy Development

Fundamental to sound policies and procedures in justice organizations is the policy development and maintenance system. It became apparent early in this study that neither the Alaska justice system as a whole nor its components have adequately defined such a system. Aside from perhaps the Court, no criminal justice agency in Alaska has instituted a continuous process for the comprehensive development and updating of its policies and practices. There is room for improvement even in the Court's policy and procedural development system.

Policy development most frequently entails periodic efforts to produce a new volume of the rule book or relatively intensive short term efforts to write a special policy to cover a critical problem area.<sup>1</sup> Consequently,

---

<sup>1</sup> This conclusion is illustrated by the fact that the Anchorage and Fairbanks Police Departments, Alaska Division of Corrections, Alaska Board of Parole, and the Alaska Department of Law were all involved in major policy writing efforts at the time data was collected for this study.

significant portions of some policy documents reviewed were out of date and are not currently being followed. It may be unfair at times to make conclusive judgments about the adequacy of existing policy manuals without comparing them to the operations of agencies to determine if they are still operable.

In many instances, agencies do not have comprehensive codified manuals of policies and procedures for their operations. This is not to say that policies do not exist, rather they exist in the memories of employees and in multiple file cabinets and memos throughout such agencies. Even in agencies with well developed policies, employees at times do not have access to them. Seldom are complete copies of existing manuals readily available to all people who are expected to comply with them. Justice officials of one agency affected by justice operations of another component of the Alaska justice system frequently do not have ready access to the policies and procedures of these counterpart agencies.

Although some employees of criminal justice agencies have trouble obtaining information about policies and procedures, members of the public find it to be considerably more difficult. There is no general agreement on whether policy and procedural manuals must or even should be made available on request to private citizens. Many officials were reluctant to release policy

information for the study to us; some released documents with instructions not to reproduce any portion of them; others ordered confidentiality for specific sections of their documents; and still others discussed the documents with us but did not provide copies for analysis.

It seems reasonable that policies and procedures should be available to members of the public for review and criticism. After all, justice policies are designed to provide guidance to government employees carrying out the public's business. Citizens may be able to provide unique insights or identify discriminatory elements of policies that have been overlooked by agency personnel. Further, it can be argued that members of the public should be able to determine for themselves if government employees are actually conducting business in accordance with the formally established practices of the agencies.

It seems logical that the employees responsible for following the policies and members of the public should be given opportunities for involvement in the development of the policies and procedures. Such involvement at times does not occur because policies and procedures are usually developed by staff people with limited consultation with the people most directly affected.

#### Deficiencies

Even in agencies with extensive policy and procedural

manuals, some of the activities of Alaska criminal justice agencies that have the greatest potential for harmful discrimination are not covered by formally written agency policies. There seems to be a tendency to develop policies which address simple problems or situations and leave difficult and controversial issues uncovered. The police field provides one of the clearest illustrations of this situation. In one agency, policies concerning how officers will affix patches to their uniform and how they will wear equipment receive pages of attention, while policies concerning the use of deadly force are presented in less than a page.

Some of the most critical decisions with the highest potential for discrimination are left almost completely to the discretion of people who are checked only after their decisions create problems. Faced with such decisions, employees are left to make judgments based only on their own experiences and perspectives. It is not uncommon to find no record of the reasons for discretionary decisions, and in some instances it is apparent that a different employee might have made a different decision. Without criteria for the guidance of decision making, the probability of improper considerations influencing decisions and substantial discrepancies in decisions made are substantial.

#### Personnel Preparation

Closely related to policy and procedural development and maintenance is the preparation of personnel who are



responsible for instituting and complying with these guidelines. Except for police and to a lesser extent correctional officers, Alaska justice agencies rely heavily on higher education and work experience in the preparation of new employees. Higher education is designed primarily to enhance cognitive abilities; it can not be assumed that college educated people will inevitably make any more uniform or unbiased decisions than their less educated fellow citizens. Where training is nonexistent or inadequate, reliance must be placed on employees with longer tenure to provide new employees with interpretations of the appropriate practices to be used in decision making. It is not surprising to find substantial differences in the way situations are handled in different parts of the same agency. Such variations are more likely to create problems for large and statewide agencies than for smaller local organizations. It may be logical, even wise, to have a system for operational policy differences within a statewide organization; however, such differences should be the result of in-depth evaluation rather than the happenstance of individual judgment calls.

### Conclusion

It seems reasonable to expect the policies and procedures of Alaska criminal justice agencies to be systematically organized, updated, and available to both those employees who administer them and those citizens who are

recipients of such administration. Further, it would seem that the public should be able to expect employees will have sufficient preparation for maximizing their ability to provide equitable interpretation and administration of the policies.

#### Resource Use Policies

There are two general systemwide organization and management policy areas where questions concerning the impact of agency practices on equitable treatment of citizens of different economic, sex, ethnic and racial groups should be raised. These areas involve (1) organizational resource allocation, and (2) personnel practices.

#### General Allocation Issue

The allocation of the resources of public agencies is one of the most important policy areas in government. All other factors being equal, it would seem at least a rough relationship exists between the relative proportion of resources allocated to a function or an area and the service level and quality provided.

Resource allocation takes on particular significance in this study because of the disproportionate concentration of Natives and economically disadvantaged citizens in the rural regions of the state. In general, these rural areas have the highest cost of living and of doing business in the state. Rural communities are, generally, the least able to

provide financial support for their own local services. Given these situations, a higher proportion of the state's criminal justice resources must be allocated to rural areas simply to give citizens living in these areas services on par with those provided in other areas of the state. The state bears a special obligation for ensuring equitable treatment of people in rural areas as a result of the Alaska Constitution mandating a state responsibility for providing local governmental services in the unorganized borough regions which encompass the poorest of the rural parts of the state.

In fairness, it should be recognized that there are those who do not endorse such a conclusion. These people may reflect the views of a majority of state-level justice managers who would claim: (1) resources allocated to one area actually provide services to other areas; (2) higher management costs distort the actual operational resource allocations; (3) existing resource allocations are essential to efficient operation of the system in a state like Alaska; and (4) practical considerations related to costs, employee housing, transportation and communications prevent the institution of alternatives to the existing allocation schemes.

In light of such contentions, it might be more beneficial to focus initially on a more basic consideration than

the actual allocation of resources--the policies established by state criminal justice components and agencies for the allocation of their resources. In other words, are the policies and procedures for deciding on justice system resource allocations sufficiently rational and effective to ensure reasonably equitable treatment of all citizens?

We have not been able to find any formal (written) policies that are used as a basis for the allocation of resources. Although it is apparent criteria for resource allocation exist in the minds of many criminal justice administrators, the lack of formal written policies makes it impossible to subject these criteria to objective evaluation.

Even if one accepts the assumption that inequitable resource allocation results in inequitable services and treatment, it is difficult to assess precisely the proportional allocation of criminal justice expenditures and resources by the various regions of the state and their populations. This project was not designed for complete analysis of this situation. Gross comparisons of expenditures for the police, legal and correctional components of the state's justice system, locations of facilities, geographic location of employees and population of regions seem, however, to reflect a disproportionate allocation of resources to the more populous areas of the state.

Although there are a variety of explanations for such a situation, a review of past history seems to point to the conclusion that it stems from the early territorial decisions about the appropriate location of justice services and the use of an incremental approach for expanding these services in the ensuing years.

### Personnel

The possible contributions of personnel policies and procedures to the absence or presence of sexual, racial or economic discrimination in criminal justice operations is probably the most difficult type of policy assessment. Potential relationships are imprecisely defined and there is a dearth of sound evidence concerning cause and effect conditions. The statistical analysis completed by Cascade Research Center provides no substantial information concerning such relationships. The subjective policy reviews done for this study are inadequate for more than raising the most general questions about personnel practices that may influence the level of discrimination in operational policies and practices.

In general, it appears policies and criteria concerning personnel hiring in most Alaska criminal justice agencies can be more readily satisfied by people who are male, who are from the predominant culture, and who have economic means than by applicants who do not have such characteristics. It seems that the more bureaucratized and rou-

tinized the criminal justice agency, the greater the barriers to the employment of women and minorities.

Policies in the police field that are most widely acknowledged as working against the hiring of women are related to physical agility and so-called job-related tests which create an advantage for people who have had previous police experience or training. In other components, educational and experience requirements hamper women. For minorities and the poor, police policies related to credentials, situational questions, oral interviews and paper and pencil testing create employment barriers. Those who argue in support of such practices claim that the factors being evaluated are job related and the selection criteria and processes are justified.

The underrepresentation of women and minorities is greater, in most cases, at each higher level of authority and responsibility within Alaska criminal justice agencies. Consequently, criminal justice agencies are heavily dominated by white males. The male domination includes the only correctional institution in the state devoted exclusively to women. Further, except in small predominantly Native communities, none of the locally funded justice agencies had a chief executive who is a Native or other minority.

Although many contend present policies and practices do not constitute improper discrimination, in the minds of most

people who are underrepresented, improper discrimination is a fact. The perceptions of improper discrimination might be better understood by males and whites if these people were to consider whether they would view personnel policies as fair if all of the criminal justice agency executives and top level authorities were minority or female.

It appears that unless modifications are rapidly instituted, present recruitment and promotion policies of Alaska criminal justice agencies will most likely prevent any significant change in the proportion of women and minorities in mid- and top-level positions in the Alaska criminal justice field within the next 10 years. Only significant modifications in these policies will substantially change the present situation in the foreseeable future.

It is difficult to identify a direct relationship between the dearth of women and minorities in positions of authority in criminal justice agencies and discriminatory policies and practices of the agencies. It would seem, however, that policies created and implemented by white, male officials might tend to be more one-sided and discriminatory than policies in which minorities and women have been involved.

#### Summary and Conclusions

Several observations concerning policy issues which seem to affect the entire Alaska criminal justice system were

offered in this section. The situations identified as possibly contributing to justice discrimination include:

1. The absence of a system or established process for policy development and maintenance at either the systemwide or component agency level.
2. Practices which insulated policies from scrutiny by employees and citizens.
3. The absence of policies or records of decision making precedents in some areas which have high potential for decisions that may have unanticipated and inconspicuous discriminatory consequences.
4. The absence, particularly in the legal component, of organized, systematic programs for teaching employees policies and appropriate decision making within policy guidelines.
5. The absence of written policies for the allocation of the state's criminal justice resources and services.
6. Uneven allocation and distribution of criminal justice resources and services which may have discriminatory consequences for minorities and the poor, particularly in the rural areas of the state.
7. Personnel policies and practices that may be keeping an equitable proportion of minorities and women from participating in the development of justice policies and procedures.



## SECTION 3

### POLICE

Policing in Alaska is the most decentralized component of the state's criminal justice system. This situation seems to be the result of both a combination of historical necessity and the philosophy of policy officials. Police are viewed as the fundamental initiators of criminal justice system processes, and perhaps it is for this reason that the unstated policy of keeping policing under the control of local jurisdictions has been supported by the citizens and officials of Alaska. Even though the state government has formal responsibility for providing police services throughout Alaska, it has practiced a policy of caution in using the State Troopers for general criminal law enforcement services within incorporated local communities unless there is strong evidence that a community desires Trooper assistance.

The activities of the Alaska State Trooper Division of the Department of Public Safety, the state's largest police agency, tends to be most heavily focused along the state's highways. This seems to be due in part to police problems tending to occur predominantly along these transportation routes, and in part to the fact that the primary mode of transportation for Troopers has been the automobile.

Traffic law enforcement seems to receive a high priority in the allocation of Department resources. None-the-less, Troopers provide nearly all of the police services in unincorporated and incorporated areas without their own local police. In addition, the Troopers assist and support communities that have their own police services, but need additional assistance. The efforts of the Troopers in this last category are usually initiated in response to specific requests from citizens or police officials in the local communities rather than being self-initiated by the Division of State Troopers. Many rural communities with local police tend to rely on Troopers as backup personnel and referral agents who serve as intermediaries between village police officers and state prosecution and judicial operations in the processing of felony cases.

The second largest police jurisdiction in the state from the perspective of geographic area is the North Slope Borough Department of Public Safety which is headquartered in Barrow. Although this agency has only about 30 sworn officers, it serves nearly all of the communities north of the Arctic Circle on the North Slope of Alaska.

The remainder of the police agencies with general police powers in the state are confined to smaller geographic areas with a higher density of population. Anchorage, Fairbanks and Juneau are the largest of these municipal departments. These cities are made up primarily of white residents with

sizable transient and permanent populations of Alaskan Natives and a small, stable population of blacks. In addition, about 40 other cities employ their own police officers.

### Policies and Procedures

The Alaska State Troopers and all larger police agencies in the state have policy and procedure manuals. With only two exceptions, we encountered what we perceived to be ambivalent feelings on the part of police management concerning the public display of provisions in their manuals. We could not obtain several manuals we requested, and we received some police policies only after giving assurance that we would keep them confidential. In nearly every instance we were cautioned that portions of the manual are currently not reflective of practices and portions are being revised.

Several factors should be considered in drawing conclusions concerning policies that may contribute to improper discrimination. First, it seems clear police officials have conscientiously attempted to institute policy and procedural statements that are in fact and in appearance fair and impartial. Second, it is difficult, without investing considerably more effort than was possible under this project, to be absolutely certain that some policies defined in the manuals have not been rescinded. Third, without actually

observing the police officers and organizations, it is impossible to state the extent or nature of the compliance with the formal policy statements. Fourth, in the absence of appropriate data concerning the consequences of the policies, estimates of impact may be inaccurate.

Given the preceding, it would be improper to single out agencies that cooperated in the study for criticism. We will deal, therefore, with shortcomings of the policies and procedures in a general fashion. The problems we have isolated exist to a greater or lesser extent in most, but not all, of the agencies we reviewed.

#### Personnel Utilization

One conclusion drawn from the interviews with police officials is that personnel distribution policies and practices have the potential for creating inadvertent discrimination against the poor, minorities and youth. As previously mentioned, people in remote rural areas may not receive treatment equal to that enjoyed by citizens in population centers and on the highway system because of the allocation of resources by state level justice agencies.

A similar, but converse, situation may exist within the municipal jurisdictions of the state. In accordance with management techniques usually considered by police administration experts to be sound practice, police personnel are assigned to functions and areas perceived by citizens and

managers as needing police attention. Where such assignments are not made by managers, police officers themselves gravitate to situations and locations perceived as being problem areas. The seriousness attached to particular situations is usually a reflection of attitudes held by the public. Such citizen attitudes are often related more to the conspicuousness of situations than to any rational assessment of the amount of social harm caused.

More often than not such conspicuous behavior involves poor people, Native and minority people and young people who are more readily distinguishable and who tend to congregate in public within specific small areas of municipalities. They socialize and sometimes engage in verbose conduct and, like their fellow citizens who socialize in private, they at times consume alcoholic beverages. The extra police personnel and attention to such areas where people congregate logically increases the probability of police detecting more law violations even if other factors were equal. The problem is complicated by the fact that the more violations detected, the greater the perception of problems needing police attention.

One is hard pressed to find fault with police officials for being responsive to conspicuous problems and public opinion but even administrators who believe in high sensitivity to public pressure express concern about the possible discriminatory consequences of relying heavily on

public opinion in allocating police field operations. Perhaps there is nothing wrong with focusing police efforts on conspicuous activities of which the public disapproves; nonetheless, it seems clear that such a focus will in all probability result in a disproportionate amount of poor, minorities and youth being contacted, stopped, warned, cited and arrested by municipal police officers.

#### Male Orientation

Police policies usually have a very decidedly male orientation. This fact is illustrated by the continuous use of the term "policeman" in contrast to the neutral term "police officer" in police manuals. It is not unusual for police policy manuals to contain sections dealing with sex-specific topics such as "Transportation of Women," in which police are prohibited from searching women except in emergency and admonished to drive the most direct route to the jail without unnecessary stops when transporting female prisoners. In sections relating to the interviewing and interrogation of women, police are instructed to ensure the presence of witnesses and to leave interrogation doors open when they are dealing with women in private. No such admonishments are provided for female police officers who are dealing with male prisoners and suspects.

Perhaps this orientation simply documents the need for updating police policy and procedural manuals. At least one

police agency is in the process of rewriting its procedures to eliminate the male orientation of its policies and procedures. This agency is substituting language such as "members of the opposite sex" for instructions which were previously designed just for male police officers.

#### Field Interviews

The police practice of stopping people deemed to be suspicious and initiating a "Field Interview" record seems to be considered an important police technique by agencies and officials who exercise general police powers in the state. Based on indications in the municipal police manuals, the Alaska State Troopers maintain a file on all of the Field Interview records submitted by Troopers and municipal police throughout the state. This practice is defended as assisting officers in identifying people who were in the vicinity where crimes have been committed. Further, by interviewing companions of people who are known or suspected of having committed criminal acts in the past, police investigators are given clues about possible participants in criminal acts.

Critics of such a practice claim that the criteria police officers use for determining who will be considered a "suspicious person" are more likely to single out poor, minorities and young people than others. Some police manuals contain no guidelines about how police officers are to determine if such a person should be deemed suspicious.

The absence of such policy guidance may create more potential for improper acts than policies that inadvertently have a differential impact. An illustration of a formal statement that may be inadvertently discriminatory was found in one manual. This manual gives the following guidance for officers who are considering whether or not to stop a person for a field interview.

#### Persons on Foot

The following circumstances generally justify the stopping of a person on foot for Field Interview. Each of us must exercise a combination of judgment, experience, common sense and knowledge of criminal operations in interpreting whom to stop.

- A. Unusual Dress or Appearance - Persons who do not match the surroundings are good subjects for interviews; for example, shabbily dressed persons in a better class neighborhood, persons wearing a combination of new and old clothing or persons wearing or carrying unseasonal clothing should usually be investigated.
- B. Unusual or Suspicious Actions - Persons who are carrying large bundles, suitcases, barracks bags, tool boxes or similar items at a time when such activity would be unusual should arouse a patrolman's suspicion. A person who seems unreasonably nervous upon meeting a policeman or who turns onto a side street or who crosses to the opposite side of the street as an officer approaches him is also suspicious. A man following a woman down a dark street for a considerable distance, a person moving rapidly from between buildings or from an alley and then slackens his pace or tends to blend with a crowd upon reaching a busy street, and persons who dispose of objects as an officer approaches, regardless of the size of the package, should be investigated.
- C. Suspicious Groups - Officers should be alert for groups that disperse as they approach, as



those who leave the group hurriedly may do so to divert attention from one who stands his ground and who may have something in his possession that he wishes to conceal from you. Be alert, also, for persons standing behind drive-ins after closing time. This is a good place to unload stolen car parts from one car, where the parts were placed collectively, to the cars of each member of the group. A group standing in front of a store entrance might well be concealing a door which they have broken in through and one member of the group has gone to burglarize the store. Two or more persons, either juveniles or adults, standing in or around a telephone booth, should be given attention because one might be simulating a telephone call while the other is picking the coin box lock or otherwise tampering with the instrument.

- D. Loitering - Loitering in itself is not unusual in certain places, but when coupled with other circumstances may often indicate that an interview should be made. Persons loitering under the following circumstances should be interviewed:

In darkened doorways; on dark streets; near parked cars; in the vicinity of the scene where an incident has taken place; about business houses near closing time and around locations where crimes have recently been committed. Persons who loiter in or around banks; check cashing establishments; or hangouts of known criminals should also be investigated.

#### Persons in Vehicles

There are several circumstances that justify stopping persons in vehicles for a Field Interview. Bear in mind that these circumstances are also general suspicion arousers and should not be considered as the only circumstances justifying a Field Interview.

- A. Out of Place Vehicle - Persons driving old cars in better class neighborhoods with seemingly no particular destination may be cause for Field Interview. Many burglaries and auto accessory thefts are committed day and night by opportunists who drive around and

commit these crimes when they think they can get away with it.

- B. General Suspicious Vehicles - Cars that are obviously weighted down may warrant stopping; checking out a weighted down car might uncover a load of stolen property or a safe that has been kidnapped. A group of juveniles in a car who watch you carefully are good subjects for interview under most circumstances. Particular attention should be given when a car turns off the street on which it was traveling when its driver spots a police vehicle. A slow moving vehicle with the driver looking around may justify an interview of the driver. Juveniles driving around repeatedly in the same area, whether during one night or on different days, should be questioned. Many stolen vehicle cases and auto accessory thefts are committed by juveniles who just cruise around until the right opportunity arises. Vehicles with passengers inside and parked for an inordinate length of time at any location should be considered suspicious.

Most police officers who read the preceding will defend the criteria as contributing to sound arrests and the clearance of crimes. Whether a police agency has a written policy such as this one or not, the policy seems to accurately reflect the mental set and the practices followed by most police in making field stops and interviews. Perhaps it produces results, and perhaps it is reasonable. On the other hand, it logically results in members of minority groups and youth being stopped and interviewed more frequently than the average citizen. Such practices most likely make a significant contribution to the disproportionate number of minorities and young people appearing in police arrest statistics.

### Warnings, Citations and Arrests.

Police have an obligation to "enforce" the laws. Most police managers interviewed agreed that to enforce means to obtain compliance with the law. Police have several strategies for enforcing the laws. These strategies include (1) being conspicuous, (2) making verbal warnings, (3) issuing written warnings, (4) issuing citations, and (5) making physical arrests. Research seems to support the conclusion that being released pending trial enhances the ability of an accused to prepare a good defense, hence, people who receive citations seem less likely to be convicted than are those who are arrested and incarcerated until trial. Further, it is claimed, people who are physically arrested for minor law violations in some instances spend more time in jail awaiting trial than the average person convicted for the same offense normally receives as punishment. If these conclusions are accurate, police policies concerning the exercise of discretion concerning warnings, citations and arrests have significant potential for preventing discriminations.

Policies concerning the use of verbal warnings are the most difficult to write, hence practically no guidance has been prepared for police officers in this area. We found only one agency that required officers to make records on verbal warnings. Such records might provide information that would be useful in preparing policies and procedures.

In addition, they could be used to accumulate data to minimize discrimination in the use of warnings in lieu of citations or arrests.

Alaska Statutes and Court Rule 4 authorize the use of citations for any case where it is lawful to arrest a person without a warrant. The determination of whether a person is to be given the benefit of a citation is, however, left with the police.<sup>2</sup> We found only one police department that provides substantial guidance for the exercise of officer discretion in deciding whether to issue a citation in lieu of physical arrest and incarceration. The practice of leaving this matter entirely to the discretion of officers undoubtedly results in different standards being applied across the state.

The agency with procedural guidelines for misdemeanor citations also has extensive instructions concerning considerations and circumstances under which police officers can issue traffic warnings and citations in lieu of arrest. These procedures provide evidence of the feasibility of developing guidelines that should reduce the probability of unfair differences in the treatment of citizens. The procedures are, however, considered highly confidential by

---

2 Judicial officers are required by Rule 4 to issue summons in lieu of warrants unless there is reason to believe the accused will not respond. There seems to be a great deal of variation in the interpretation and adherence to this rule.

the police department, and members of the department are specifically prohibited from referring to them, alluding to them, communicating them or divulging them to any person outside the department without expressed permission from the chief. The intent of such confidentiality is to prevent citizens from using the information to facilitate criminality; however, it also prevents citizens from seeing the reasonableness and fairness of the procedures.

Police procedural policies and guidelines concerning arrest, and search and seizure, in main, consist of summaries of the court decisions and laws. The material contains nothing which we would assess as contributing to discrimination. In general, policy and procedural guidelines in those agencies where they exist provide police officers with adequate information about when they have a legal right to arrest. This area is one of the most adequately covered in terms of police operational policies. Its shortcoming lies in the fact that officers are left without guidance concerning when they should exercise alternatives to arrest.

#### Use of Force

Nationally, the issue of police use of force is surrounded by heated controversy. Statistics concerning police use of force reveal that police use force disproportionately against young adults and minorities. Such statistics were not evaluated during this study so it is not

possible to compare the national situation with Alaska. In some respects, however, Alaska statutes define the circumstances under which police officers can use force more tightly than is the case in other states. This situation may serve to keep the use of force by police officers lower than in other states.

Alaska Statutes permit a police officer to use non-deadly force and threaten to use deadly force in initiating an apprehension:

[W]hen and to the extent he reasonably believes it necessary to make an arrest, to terminate an escape or attempted escape from custody, or to make a lawful stop. He may use deadly force only when and to the extent he reasonably believes the use of deadly force is necessary to make the arrest or terminate the escape or attempted escape from custody of a person he reasonably believes

(1) has committed or attempted to commit a felony which involved the use of force against a person;

(2) has escaped or is attempting to escape from custody while in possession of a firearm on or about his person; or

(3) may otherwise endanger life or inflict serious physical injury unless arrested without delay.

(b) The use of force in making an arrest or stop is not justified under this section unless the peace officer reasonably believes the arrest or stop is lawful.

Other sections of the statutes permit the use of deadly force when necessary to:

1. defend against kidnapping, sexual assault, or robbery;

2. terminate a burglary in an occupied dwelling or building;
3. terminate the commission or attempted commission of arson upon a dwelling or occupied building; and
4. terminate the escape of a prisoner who is either thought to be armed or to have been incarcerated for a felony charge from a correctional facility.

Even though these statutes provide clearer parameters for the police use of deadly force than exist in most states, they provide only the most general guidance. The statutes fail, for example, to define the circumstances under which an officer could shoot a person who seems to be engaged in the arson of a dwelling. Nor does the law define what circumstances would have to be present before the situation would merit the use of deadly force in a defense against sexual assault. Could an officer shoot an assailant even though there is a high probability of injury to a sexual victim?

Most police recognize that state statutes merely define situations where police use of deadly force is protected from criminal sanctions. The fact a person cannot be held criminally or civilly liable for the use of deadly force does not automatically make the use of such force morally or ethically proper, particularly if less drastic, effective alternatives are available. Consequently, the consensus of police management experts is that general state statutes are not by themselves sufficient to prevent the misuse of deadly force.

Police experts nationally maintain that police departments should have well-defined policies covering all aspects of the police use of deadly force. The latitude for discretion should be very carefully, clearly and extensively defined. Such policies should be completely understood and rigidly followed by all officers.

In the judgment of the reviewers, the firearms use policies and procedures for Alaska police officers do not meet the generally endorsed professional standards in the field. For illustration purposes, the following statements are representative of the guidelines provided officers by Alaskan police agencies:

Employees shall not use more force in any situation than is reasonably necessary under the circumstances.

Officers shall not use or handle weapons in a careless or imprudent manner. Officers shall use weapons in accordance with law and departmental procedures.

Officers shall not discharge their firearms in connection with police work except (1) at an approved range, (2) to kill a dangerous or severely injured animal, (3) in defense of their own or another's life, and (4) in compliance with state law.

It should be made clear, however, we have been advised that several police agencies are currently in the process of drafting them or have instituted new procedures in recent months.

The Alaska basic police training program includes instruction concerning firearms use; therefore, most police



officers have been provided with information beyond the law and the policies of individual police agencies. Not all police officers in the state have been fortunate enough, however, to attend basic training. Some officers began their careers before the requirement of basic police training; others completed training in states where little emphasis was placed on firearms use; and others are working for local police agencies while awaiting an opportunity to attend the basic police program. It may also be true that officers who have worked in the field several years have not received any refresher training since their initial employment.

The information available to us indicates that nearly all of the police agencies large enough to be called departments have policies requiring the initiation of some type of formal report in instances where a weapon is fired or deadly force is used. In most cases there is a formal procedure for automatic review of situations where officers use deadly force or fire weapons. Therefore, information concerning such situations is accumulated, reviewed by police officials and maintained in agency files. Such information could be used both for policy development and training.

In our estimation it would be prudent and proper for Alaska criminal justice officials to take action to ensure comprehensive and explicit policies and procedures and

training are provided to assist and guide police officers with decision making in this critical area.

Leaving heavy responsibility for judgment calls on police officers not only places an unfair burden on the individual police officers, it also creates a high probability for wide variations in decisions about the use of force. A decision to use deadly force in the line of duty is one of the most serious and critical judgments any government official can be responsible for making, and it surely merits at least as much attention in the procedural manuals of police as is given to the rules for wearing the police uniform or procedures for writing a report. In some cases, it presently does not receive such attention.

### Conclusions

The number and variations of police operations in the state make it difficult to draw general conclusions concerning police policies and procedures. Given the response to our request for police policy and procedural manuals, it is clear that many officers do not have access to a general manual of operating procedures. The procedures available in some agencies are outdated and have limited utility. It is difficult without reviewing actual police operations and statistics related to police actions to provide strong statements about policies which have potential for producing improper discrimination. Therefore, except for a few major areas, conclusions related to police operational policies

are tentative and speculative.

The policy areas which provide the highest potential for stimulating or permitting differential treatment by police are related to:

1. personnel hiring, utilization and assignment;
2. field stops and interviews of suspicious persons;
3. use of authority to warn, cite or arrest violators;  
and
4. use of force.

In most cases, the most critical problem is that the police policies in these areas are inadequate for the control of discriminatory actions.

## SECTION 4

### LEGAL AND JUDICIAL

The legal and judicial components of Alaska's criminal justice system are highly centralized and, in relation to the police situation, these agencies are relatively insulated from direct local control. Three state level agencies--the Department of Law, the Public Defender's Office and the Alaska Court System--have interrelated segments of responsibility for ensuring constitutional and impartial, yet equitable, administration of Alaska criminal statutes. The unified statewide authority of these agencies has prevented the organizational fragmentation which is generally viewed as a primary source of problems associated with the administration of justice elsewhere in the country. The Alaska arrangement should facilitate comprehensive organizational assessment and the institution of changes to improve the operational efficiency and effectiveness of legal agencies throughout the state.

Consistent with the obligations of this study, we attempted to evaluate the policies and procedures related to the legal and judicial operations of the criminal justice system. As in the police field, this task proved to be more demanding than it would at first appear. The original assignment of the activity was based on an assumption that Alaska criminal justice agencies would have comprehensive

manuals containing administrative and operational policies and procedures. Such a complete manual does not exist in either the prosecution or defense agencies. The Court System alone provides detailed rules for its operations. This is not to say standard policies and procedures do not exist, for they do; however, they are scattered throughout a multitude of handbooks and memos or consist of undocumented practices which are passed on by word of mouth.

Further complicating the situation is the fact that the different geographical subdivisions of the legal and judicial agencies have various, unique approaches to handling similar situations. As with police and correctional operations, some policies were being rewritten at the time we were doing this study.

Several observations concerning policies and practices which may contribute to improper discrimination against unique subgroups of citizens can, however, be made. The release of accused persons after arrest is one area that to some extent involves the practices of all legal and judicial agencies.

#### Pretrial, Prosecution and Defense

The Alaska Code of Criminal Procedure requires that on the first appearance of an accused before a judicial officer the accused will be released on his or her personal recognizance or unsecured appearance bond unless the officer determines the person cannot be trusted to appear at future pro-

ceedings or the person will pose a danger to other people in the community.

The Code further requires a judicial officer making the release decision to take the following conditions into account in determining the conditions for pretrial release of an accused: (1) the nature and circumstances of the offense charged; (2) the weight of evidence against the person; (3) the person's family ties; (4) the person's employment; (5) the person's financial resources; (6) the person's character and mental condition; (7) the length of the person's residence in the community; (8) the person's record of convictions; (9) the person's record of appearance at court proceedings; (10) any previous flight to avoid prosecution or failure to appear at court proceedings by the accused.

It is difficult, without a thorough assessment of the application of this policy, to determine with certainty if it contributes to discrimination; however, the potential seems to us to be high. Obviously, consideration of such issues as family ties, employment, financial resources and length of residence in the community are all areas where young people, minorities and people in lower economic groups are likely to fare worse than are others. In fact, Alaskan Natives who are arrested while visiting an urban center will probably receive much less considerate treatment than a

local resident arrested for the same offense under the same circumstances if for no other reason than the difficulty of obtaining background information on a person who resides elsewhere.

Appropriate supplemental policies concerning the interpretation of these criteria might produce more equity than is apparent in the general conditions; however, we could not locate any additional judicial, prosecution or defense guidelines for interpreting these conditions. Similarly, there were no guidelines for a district attorney or public defender to use in advising judicial officials concerning pretrial release.

The Code also provides that a criminal defendant is entitled to be admitted to bail before conviction as a matter of right. The Supreme Court has ruled, however, that an indigent defendant has no absolute right to be released without bail. In other words, sufficient money will always win one's pretrial release, but people without financial standing are not always entitled to release. If consideration is given to the monetary wealth distribution among the citizens of the state, subsistence Natives, urban Natives and minorities are the people who are most likely to be held in jail prior to trial. The significance of this situation to discrimination is increased by the fact that defendants who are incarcerated prior to trial traditionally have had the highest probability of being convicted.

We did a limited review of inmates who, over a six-month period, were detained in the Sixth Avenue Annex because they were unable to post the established bail, and we found 118 cases where accused persons were held in lieu of a bail of \$100 or less. It appears one defendant was held for approximately two months because he did not post \$50 bail.

An accused is entitled to apply for a review of the conditions for release if he or she has not been able to meet the release conditions within 24 hours after the appearance before the judicial officer. We have not, however, been able to locate any policy that would ensure that accused persons are informed of this right. Such rights are obviously meaningless unless the people affected are aware of them. Further, even when a person is informed, cultural factors may inhibit the utilization or ability to assert rights.

The current policies related to both bail and fines should be reviewed. At the present time, people who have financial affluence receive more considerate treatment than poor or subsistence people. Perhaps bail and fine levels should be more clearly related to a person's ability to pay or income level.

#### Prosecution and Defense

Economic considerations have other consequences for differences in the services that are provided to citizens of



the state and defendants. As previously mentioned, criminal justice organizational arrangements seem to ensure that people in remote rural communities of the state are not normally provided the same level of services as those who live in or near the urban population centers. Neither the prosecutors nor the public defenders feel they receive adequate resources to maintain the closeness of relations to citizens in remote areas as they maintain with those in communities near their offices.

Prosecutors seem to have an advantage over defense officials because they can rely on Alaska State Troopers in obtaining information about criminal matters occurring in rural communities. Although the Public Defender's Office employs several Defense Investigators, there are inadequate resources for routinely assigning these investigators to review the circumstances of incidents occurring in the rural communities. The Public Defender on occasion does not have the resources or means to locate critical witnesses who are thought to be residing in rural communities.

This situation is complicated by the organization of the crime laboratory services as part of the police rather than as an agency responsible to the Alaska Court System or as an independent agency. Although the scientific analysis of evidence should be a neutral, purely objective function, the policy decision placing this activity clearly on the side of the prosecution may affect the Public Defender's ability to

provide equitable defense for the poorer segment of society.

When the policy and procedures for this study were being collected, internal policy and procedural documents in the District Attorney's and Public Defender's offices were in memo format and filed either in an office notebook or file folders. They were not indexed adequately for ready retrieval nor published for general distribution. As with the policies of police agencies, they were not available for public inspection or review. It is also fair to conclude that in the development of these policies and procedures little, if any, opportunity was provided for systematic collection or consideration of the opinions or preferences of citizens, communities or clients who would be affected by them.

There is the possibility that important information concerning the problems and needs of minorities not represented on the legal staffs of these agencies is overlooked because of the approach to policy development and maintenance. Consideration might be given to instituting a policy system that would ensure broader public participation in the assessment of the practices of these agencies.

The Department of Law instituted a rather comprehensive consolidated policy document in June 1980, which seems to provide general guidelines for discretionary decision making in such areas as (1) case screening, (2) charging, (3)

multiple charges, (4) multiple defendants, (5) providing information to police, victims and witnesses, (6) use of grand jury and preliminary hearings, (7) plea and sentence negotiations, (8) prosecutorial participation in sentencing, and (9) charge negotiations. We were unable to identify any aspects of these procedures which are overtly discriminatory. Attorneys are, however, still given broad latitude for judgmental decisions. It is possible that some aspects of the procedures are not consistent with the expectations of some Native communities where several instances of misbehavior by a person are overlooked before residents reach the point where, in desperation, they seek help from the Troopers. Perhaps in such instances a different policy on multiple charges might be appropriate.

The practice of limiting pretrial diversion almost exclusively to Anchorage seems to result in defendants at other locations receiving less consideration. There is something to be said for investing available resources in developing equitable services for all regions before instituting permanent programs that would increase the inequitable treatment for people in only one area of the state.

One of the most critical matters related to defense operations is the absence of procedures to ensure appropriate communication between the Public Defenders and their clients. There is presently no formal policy to

ensure that an accused person who must rely on public defense personnel will be provided appropriate attention either before, during or after a trial. In some instances, defendants have no opportunity to talk with their attorney before trial. Sentenced defendants may never again hear from their attorneys. It seems that Native defendants are the most likely to suffer as a consequence of such inadequate attorney-client communications. Regardless of the resource situation, the Public Defender's Office needs policies covering this area.

#### Judicial and Trial

Even though the Court System consists of a relatively collegial association of members in contrast to the bureaucratic organizational arrangements in the police and correctional components, the Supreme Court has been very active in the creation of essential policies and rules for court operations. In some cases these policies are established under the Court's rule-making powers granted in the Alaska Constitution; in others, they are defined in response to appeals from lower court rulings. As with other components of the criminal justice system, the opportunities for public and minority involvement in judicial policy development are limited.

The administrative arm of the Alaska Court System seems to have been more successful than other agencies of criminal justice in attracting and employing women. There are no

women or minorities in the top judicial positions, however. The judicial selection processes are such that the court component has good potential for rapidly increasing the proportion of minorities and women in policy making positions in the near future.

Issues related to sentencing practices of the Alaska Court System have received extensive attention in recent years. The Supreme Court, using information provided by the Judicial Council, has been attempting to address the problems identified. Progress in this area should not be equated with complete success. Our subjective assessment of sentencing policies and procedures has not revealed any information beyond that already identified by more extensive study efforts.

One procedural area of court operations we have identified where it appears that additional attention might be productively devoted is related to jury selection and organization.

#### Jury Selection

It seems clear that a significant purpose of juries--consisting of citizens who are given responsibility for making legal accusations and determining the guilt or innocence of fellow citizens--is to condition the judicial operations with the perspective of local citizens. Judges are clearly under an obligation to ensure that an accused

person's legal rights are protected from jury encroachment; however, the principle that every accused has a right to be indicted and judged in a criminal proceeding by the people of his or her community is not, at least philosophically, a right that can be denied. The Alaska Supreme Court has said, "Representation of a fair cross section of the community on the jury list is an essential prerequisite to an impartial jury." The difficulty lies in establishing efficient court procedures which adequately ensure this right.

The policy of the Alaska Court System is to use three sources for identifying citizens who will be eligible for jury service. These sources are (1) resident sports and subsistence hunting, trapping and fishing licenses, (2) voter registration rolls, and (3) state income tax returns. Since two of these three sources are related to financial considerations, it would not seem unreasonable to suspect some economic bias in the sample drawn. Further, since not all citizens are included in the base pool of names and all who do appear have initiated some formal, written document, the process cannot be expected to produce a representative sample of the population of a community or the state.

The sample of citizens chosen for jury service is further distorted by the qualifications criteria established for jurors. A person must be 19 years of age, be a citizen of the United States and a state resident, be able to read

or speak English, be in sound mental health and in possession of "natural faculties," not have served on a jury within the previous year, and not have lost his or her civil rights on account of a felony conviction. These qualifications substantially skew the representativeness of juries. The complexion of such juries may work to the disadvantage of some groups. For example, an 18-year-old can be indicted and processed by a jury, but one must be 19 to be a juror. A more complex example can be seen in the fact that young people who are members of the military are routinely accused by grand juries and tried by petit juries, yet because of residency interpretations in Anchorage, but not in Fairbanks, a sizeable proportion of the military personnel and their spouses are precluded from jury service. Given the makeup of the military, there is a substantial probability that the military people who are excluded from jury service will be disproportionately young, minority and low income.

The excusal code also results in the elimination of judicial officers, civil officers of the state or United States whose duties are inconsistent with their service as a juror, attorneys, ministers or priests, teachers, physicians, and dentists.

In light of the preceding information concerning court policies and procedures, there is a high possibility a "fair cross section of the community" is not being selected for

jury rolls. If such is true, then, using the court's conclusion, an "essential prerequisite to an impartial jury" is not being met.

In addition, the court system currently has no rules or policy for preventing attorneys from exercising peremptory challenges to remove people solely because of race, sex, age or economic condition. The peremptory challenge process might be used to create biased juries.

#### Jury and Trial Location

Native defendants from remote rural communities are likely to find that because of the practice of locating juries in urban population centers, no one from their local community or cultural background will be on their juries. Criminal Rule 6 provides that grand juries will be convened in Ketchikan, Sitka, Juneau, Anchorage, Kenai, Kodiak, Nome or Fairbanks for crimes committed in senate districts in proximity to these towns. In addition, a presiding judge may convene a grand jury at other locations if in the judge's opinion such action is "necessary in the interest of justice." Traditionally, however, grand juries are not convened outside the designated cities, and in recent times grand juries in the Third Judicial District have been convened in Anchorage regardless of the senate election district where the crime has occurred. Hearings and trials for crimes committed in Barrow (Second Judicial District)



are normally held in the Fourth Judicial District at Fairbanks.

The location where a grand jury is convened may not in and of itself have a substantially biasing effect on the grand jury process; however, even if it does, the Supreme Court has made it clear that the cost associated with convening a jury can be given priority consideration in deciding who will be chosen to serve. More precisely, the Court in Crawford v. State (1965) decided that in a conflict between economics and representativeness, the financial considerations will prevail. It said, "The standard which guides the court in making a determination as to whether jurors would be summoned from less than the entire judicial district is whether a large and unnecessary expense is involved in obtaining jurors from all parts of the district."

The Court seems to have assumed in Rule 6 that anyone residing more than 50 miles from the place where a grand jury is to be convened would require more of an expenditure than is justified. In order to go beyond the 50-mile limitation, the court administrator must receive specific authorization from the presiding judge.

This policy ensures that urban grand juries are nearly always responsible for the indictment of people for crimes committed in rural communities. Further, it means Native

grand juries consisting of people who normally reside in urban, non-Native communities.

A similar situation exists in regard to trial juries. Criminal Rule 18.1 commands that trials take place in the urban center nearest the place in the senate district where the crime was committed provided appropriate facilities for the trial exist. However, to receive the benefit of this rule, a defendant or defense attorney must specifically request a trial in the senate district of the crime prior to or at the time a plea is entered, otherwise the defendant is deemed to have waived the right to trial in that district.

Rule 24.1 provides that jurors chosen for service on a petit jury must be selected from within a 50-mile radius of the "urban center designated as the site of the criminal trial." If the court finds, however, that the selection area does not provide a petit jury which is truly representative of the appropriate community, or if the selection of jurors from the 50-mile radius would cause unreasonable transportation expenses, it may on its own designate an area other than the 50-mile radius from which jurors shall be selected.

In the previously mentioned case of Crawford v. State, the court ruled:

The policy of calling jurors only from an area within a 15 mile radius of the city of Anchorage

does not result in the exclusion from jury service of any particular and defined stratum of society, so as to detract from the broad base that the jury system is designed to have.

These policies concerning jury organization have the potential for providing grand and petit juries that do not understand the problems and concerns of the residents of remote communities. The definition of juries created as a consequence of such policies as "representative" of people in the area where the crime was committed, truly stretches the normal definition of "representative."

Such juries may not have sufficient understanding of the conditions and circumstances in remote, Native communities to make decisions that are fair to either the communities or the defendants. It is probably true that different circumstances and situations must be considered in arriving at just and fair decisions even though legal definitions are universal.

### Conclusions

Most of the policies governing the activities of the legal and judicial components of the Alaska criminal justice system are contained in the Alaska Statutes and the Alaska Rules of Court. Although both the prosecution and public defender agencies have developed supplemental practices for the exercise of discretion related to the formal policies and procedures, neither agency has established a codified policy manual. This situation reduces access to many docu-

ments used in decision making.

Among other policy and procedural areas of the legal and judicial components which have the potential for contributing to improper discrimination are the following:

1. the procedures established for guiding judicial officers in bail practices and pretrial release of defendants;
2. the absence of prosecutorial or public defender guidelines for advising judges concerning pretrial release and bail;
3. the organizational policies which result in rural communities and defendants receiving less attention and service than given to urban areas;
4. the policies that result in the prosecution having more resources at its disposal than are provided the public defender;
5. the prosecution policy of limiting pretrial diversion to people in the Anchorage area;<sup>3</sup>
6. the absence of formal policy concerning public defender obligations to maintain ongoing communication with clients;
7. court policies and procedures concerning the people who are selected to serve on grand and trial juries;
8. the absence of policy concerning improper use of peremptory challenges; and
9. court policies and procedures concerning the

---

<sup>3</sup> Expansion of the pretrial diversion project has been undertaken since the collection of information for this study.

## SECTION 5

### CONFINEMENT AND CORRECTIONS

Alaska jail and correctional operations seldom receive the public exposure given the police and legal components of the criminal justice system. In Alaska corrections is a centralized state responsibility, and the services supported by the state include (1) the hiring of local guards where no other detention capacity exists, (2) contracts with local rural municipalities for the provision of jail services, (3) state probation, (4) state operated jails, (5) state adult and juvenile correctional institutions, and (6) state parole.

These operations are covered by a tremendous number of policies and procedures. The resources available for this study were not sufficient for the compilation, review and analysis of all documents that exist within all of the various agencies and units which have responsibility for providing detention and correctional services. The focus, therefore, was placed on adult pre- and post-sentence correctional functions, institutional correctional policies and parole policies.

Many of the problems encountered in attempting to locate and draw conclusions strictly from a review of written docu-

ments in other areas of the justice system were encountered in dealing with corrections. Guidelines for corrections are reasonably well organized in the Administrative Code and the corrections manual. A major problem encountered, however, was that many of the policies and procedures provided in the written documents were outdated. Both in recognition and as a consequence of this situation, the Division of Corrections was in the process of rewriting and updating its Adult Correctional Manual during the same period when we were reviewing its policies and procedures. The result is that some observations offered in this section may no longer be valid.

#### General Observations

The Alaska Department of Health and Social Services and the Division of Corrections have policies and procedures which seem to cover most of the critical decision-making and internal management areas of adult corrections. These policies are basically well organized and accessible to people who have a need to know or an interest in the operations of corrections. Except for issues related to resource allocation and a few areas where speculation can be offered about the discriminatory potential in the policies, most policies concerning adult correctional operations seem to be comprehensive and reasonable.

A situation observed in the course of this study which may represent a problem is the fact that some of the poli-

cies designed to ensure uniform and fair treatment of persons in the custody of corrections are not being precisely followed. One example can be found in regard to gratuity payments for prisoners. The policy states: "The gratuity payment is not intended to compensate the prisoner for work performed or to bear any relationship to the type or quantity of work performed, but must be the same at each institution" (7AAC 60.110).

It appears that not all institutions have a practice of paying identical gratuities. At Palmer, an inmate can receive as much as \$6 a day; Anchorage institutions pay less.

The instances where variations from general policy were detected were not, as in the preceding case, substantial, and it was beyond the scope of our responsibility to explore such an issue in depth. Deviations may be rational and completely justified but such deviations prohibited, and it is only fair to point out that they do exist.

The arrangement of resources and facilities to ensure equitable services to all communities throughout the state and fair treatment for all correctional clients, is as significant a problem to corrections as it is to other Alaska criminal justice agencies. The level of probation and parole services in rural areas is not as great as in urban communities. Correctional facilities for sentenced offenders are situated disproportionately in urban areas.

It is more difficult for rural residents than urban residents to visit friends and relatives who have been sentenced to a state institute or attend a parole board hearing. The potential for this situation causing improper discrimination may not be as serious as in other components of the justice system. The fact remains, however, that the resource configuration does benefit some segments of the state's citizens at the expense of other segments. Further, alternative arrangements that have potential for producing more equitable results could be adopted by state policy making officials.

#### Pre-Sentence

The Alaska Division of Corrections has two pre-sentence areas of responsibility--post-arrest detention and pre-sentence investigation--where its policies may produce discriminatory consequences. It is not possible, on the basis of an analysis of formal policies, to assess the extent of harm occurring in either of these areas. There is, however, sufficient data to conclude that potential for discrimination exists.

#### Post-Arrest Detention

General correctional policies concerning the processing of arrestees released to a state correctional institution following their arrest are clear and reasonably comprehensive. Policies concerning prisoner searches, bookings and



identification processes are consistent with legal requirements and, in main, do not appear to permit or contribute to improper discrimination. Two general policy areas were, however, found which might be questioned. These are related to the storage of prisoner property and limitations on prisoner communications.

Correctional policies require that all property in the custody of a prisoner be inventoried and stored during the period when the prisoner is in the custody of corrections. However, in those instances where a prisoner has an amount of property considered to be in excess of that for which the institution is prepared to assume responsibility, the prisoner is required to arrange for its disposition. In the event the prisoner cannot dispose of his excess property, the institution will. A superintendent is authorized to spend up to \$35 to ship the property elsewhere if a prisoner is indigent and without funds. If no one is willing to accept it, the superintendent is instructed to turn it over to a charitable, non-profit organization.

Such a procedure can deprive a defendant of property without process. It is likely to cause greater harm for the poor, nonresidents and Natives than others.

The policies related to prisoner communication rights have an even higher potential for harmful discrimination. Alaska Statutes impose an obligation on police and correc-

tional officers to permit prisoners to make a telephone call upon incarceration. General correctional policies require that upon admission to an institution, prisoners "shall" be permitted to make telephone calls or other communications reasonably necessary to communicate with an attorney, relative or associate and make arrangements for bail. Booking officers may place calls for prisoners. Upon request, additional opportunities are to be provided prisoners who have failed to make an initial contact.

Prisoners are permitted to make local calls without charge, but long distance calls "must be made collect."

In addition, institutional policies concerning use of the telephone by prisoners are not standard. Prisoners awaiting trial usually have fewer telephone opportunities than do sentenced inmates. Female prisoners at Ridgeview are permitted three telephone calls out per week, whereas prisoners at the Anchorage Sixth Avenue Annex are authorized only one call.

Although an attorney who is licensed to practice in Alaska has broad visiting rights, the right of unconvicted prisoners to visit with people other than attorneys is substantially limited. The visitation policies vary from institution to institution, but in most cases prisoners who are awaiting trial have fewer opportunities and hours to visit than do sentenced inmates.

### Pre-Sentence Investigations

The Criminal Rules (Rule 32) require the probation service to make a pre-sentence investigation and report before the court imposes sentence or grants probation. In addition, a court may order a pre-sentence report at other times. The information provided in such a pre-sentence report is used by the court in decisions concerning sentences.

Probation officers are required by procedures to include information concerning a defendant's prior convictions, instances of delinquency, personal characteristics, financial condition and other circumstances affecting his or her behavior. The report cannot contain information concerning police contacts or records of arrests. The court is required to make the report available to the defendant unless reasons why such disclosure would be detrimental to the offender's rehabilitation or the public's safety are placed in the record.

Two policy related factors may affect the fairness of these reports. First, guidelines concerning the preparation of these reports leave much to the discretion of the probation officer. No significant criteria exist for determining relevant and irrelevant information. When this report was being prepared, probation officers were not required to have training in this area. The requirement of the inclusion of information about a defendant's financial condition may in

and of itself be prejudicial to people who rely on subsistence methods for their livelihood.

Second, probation officers are not normally assigned to conduct on-site investigations in remote parts of the state. Hence, it is reasonable to assume that the information obtained about defendants who normally reside in rural communities will not be as complete as that obtained about defendants who reside closer to the probation officer's office. In some instances, the officer may be forced to rely on information obtained by a single telephone call to a defendant's home village.

This situation seems to have potential for producing results which are unfairly discriminatory.

#### Classification

Correctional policies require a classification hearing for sentenced prisoners within 30 days of their assignment to an institution. The purpose of the classification hearing is to determine the most appropriate institutional assignment for a prisoner. A prisoner being classified is entitled to notice and reasonable procedural rights including correctional staff assistance and appellant opportunities. Short of actually requiring legal counsel, for a convicted prisoner, these procedures appear reasonable and fair.

The primary obligation placed on those officials involved in the initial classification, it seems, is the assignment of an inmate to the institution that will best provide the security needed to control him or her. The basic factors considered in this process are (1) the crime, (2) the sentence, and (3) the individual's past criminal record and background. A classification committee is under no obligation to consider factors other than those related to the control of the prisoner and the best interests of the Division of Corrections. Consideration of factors such as the permanent residence of the inmate and his or her family, appropriate rehabilitation programs and special problems of the inmate are left entirely to the discretion of the committee.

Reclassifications and requests for special considerations such as furloughs are also covered by policies that are devoted nearly exclusively to definitions of minimum standards and security. Those making judgments are left without any substantial guidelines for ensuring equitable treatment of different people. Even though the decisions and actions of these classification officials are subject to review by higher officials, they are provided only minimal guidelines for their judgment decisions.

Given past experiences, it is reasonable to assume that in the absence of such guidelines, the potential for unintentional discrimination exists.

### Institutional

The fundamental classifications of correctional institutions in Alaska are (1) juvenile or adult, (2) sex of the inmate, and (3) level of security. The institutions can be further distinguished by their activities, programs and procedures. These latter characteristics seem to be as closely related to the environment of the correctional facility, the philosophy of its administration and the people employed as staff as they are to deliberately contrived statewide correctional policies.

It is difficult to identify policies related to the internal operation of a single institution which reflect a propensity for improper distinctions in the treatment of people confined to that institution. On the other hand, when the procedures of the various institutions are compared, substantial differences that seem without rational foundation in the treatment of inmates become apparent. The most apparent of these differences are related to (1) visitation privileges, (2) possession of money, (3) telephone privileges, (4) educational and training opportunities, (5) counseling, and (6) alcohol and drug programs. These differences can be illustrated simply by considering the policies of institutions in the Anchorage area.

### Visitation Policies

The number of visitation hours given an Eagle River inmate is dependent on the program phase of the inmate. In

Phase I, an inmate receives four hours per week plus time during the 11 state holidays. An inmate in Phase II receives 18 hours per week plus holidays. During Phase III an inmate can have visitors 12 hours a day, seven days per week.

Female inmates at Ridgeview Correctional Center are also allocated visiting hours by program phase. Those in Phase I receive four hours per week plus four state holidays; those in Phase II are permitted six hours a week plus holidays; and those in Phase III are awarded 22 hours per week plus holidays.

The Palmer Correctional Center allows visiting three hours per day, Monday through Friday, and 10 hours on Saturdays, Sundays and holidays.

The Third Avenue Correctional Center permits visiting nine and one-half hours per week plus holidays. Special arrangements are authorized for visitors from out of town.

#### Possession of Money

There is apparently no statewide policy concerning the amount of money an inmate can personally possess while in a correctional institution. Inmates at Eagle River are permitted \$17 in nickels, dimes and quarters; at Ridgeview a total of \$8 in change is permitted; and at Palmer, \$25 in any form can be possessed.

### Telephone Privileges

The Correctional policy manual indicates that each superintendent may establish and provide procedures by which prisoners may periodically make telephone calls of a personal nature to maintain contact with their families. The policies vary among the institutions.

Eagle River's telephone use policy is tied to the phases of the inmate program. One personal telephone call a week is permitted in Phase I. A person in Phase II is given two 15-minute periods weekly during which time calls can be made. And a person in Phase III has unlimited access to a pay telephone, hence having only a financial limitation.

A Ridgeview inmate who is in the Phase Program has ready access to a pay telephone and is restricted only by the limitation on personal funds.

Inmates at Third Avenue are permitted to make two personal telephone calls per week to family or friends. They must receive special permission for additional emergency calls, but can make unlimited calls to ministers or lawyers.

A pay telephone is available at Palmer Correctional Center for inmate use at any time.

### Education

The Department of Health and Social Services requires each institution to provide a remedial education program to



the 12th grade level, and it requires an educational program and vocational training opportunities to the extent permitted by the resources of the Division of Corrections.

The institutions at Palmer and Eagle River provide their inmates with a G.E.D. program. Both of these institutions have state paid instructors. In addition, college courses are also available. Neither Ridgeview nor Third Avenue had a G.E.D. program available in the first half of 1980.

### Counseling

Eagle River's staff includes eight wing counselors, two institutional counselors and two institutional psychologists. Group counseling is conducted one hour per day, five days a week. Individual counseling is made available from the two full-time psychologists on duty.

At Ridgeview, group counseling for three hours per week is mandatory. It is conducted by either the superintendent, assistant superintendent or the institutional probation officer. Individual counseling is available on an appointment basis. One of the psychologists from E.R.C.C. is available at Ridgeview once a week for three hours and another psychologist also visits Ridgeview once a week for three hours.

The Palmer Center has only one institutional counselor on staff. If inmates need more counseling services from outside the institution are made available.

Third Avenue has two institutional counselors available for the inmates. Any psychological counseling must be done outside the institution.

#### Alcohol and Drug Programs

Alcohol programs are available at all the institutions through Alcoholics Anonymous on a volunteer basis, except for Eagle River. Their alcohol program is provided through an alcohol internship program with the Alaska Native Training Center. Eagle River's drug program is through the volunteer services of the Salvation Army Drug Program. Ridgeview's drug program is also a volunteer service provided once a week by T.A.S.C. Palmer's drug program is conducted by the institutional instructor. Third Avenue has no drug program available to its inmates.

#### Conclusion

The highest probability for unfair policy differentials in the treatment of prisoners serving time in Alaska seems to be the result of the autonomy given institutions. It is possible that many of these differences in policies are related to programmatic differences in the various institutions. It is equally possible they have no rational basis and stem from differences in opportunities available to different institutions or oversights.

#### Parole

The Alaska Board of Parole was in the process of

revising its regulations and procedures during the time the information for this study was being collected. Since the new manual was not completed, this section was based on the parole Policy and Procedure Manual and other documents obtained from the Parole Board.

The Parole Board consists of five members including a black, a female and an Alaskan Native. Each member is appointed by the governor for a term of four years. An Executive Director serves the Board by administering all procedural matters relating to the parole process. The parole policies and procedures are generally defined in such a way as to place responsibility for broad discretion in dealing with prisoners on the Parole Board.

All applicants for parole must submit a prepared application to the Executive Director of the Parole Board. Parole Board members are provided copies of the applicant's file two weeks before their quarterly meeting. They are expected to study it in advance of the meeting. At the meeting a staff member of the applicant's institution provides information about the inmate to the Board.

The Board has several written documents for use in making a decision about a case. According to Board policies these may include:

1. the pre-sentence report on the inmate;
2. a report from the institution where the inmate is confined;

3. the inmate's records;
4. recommendations from the sentencing court and other justice officials who were involved in the case.

The Board may, however, use any information it considers to be relevant and trustworthy in arriving at a decision.

Among the several criteria used in reaching a decision are:

1. the inmate's readiness to take responsibilities and face his obligations;
2. the inmate's family status and how the family views the inmate, including their interest and readiness to accept him or her back as part of the family;
3. the inmate's residence, including a home, neighborhood and the community in which the applicant will reside;
4. the inmate's employment history, including vocational and academic skills and training learned within the institution. Previous training, job experience and military training are also factors given consideration;
5. the inmate's parole plan as submitted to the institutional counselor and as presented by the inmate, the counselor and, where an attorney is present, as submitted by the attorney.
6. any past history of the inmate's drug use or excessive use of alcohol, and whether there appears to be a likelihood of a return to using either of these drugs;
7. the inmate's institutional conduct, such as adjustment to group living, performance within the assigned institutional area, relationship to the institutional staff and counselor and overall behavior during the period of incarceration;
8. the inmate's previous probation or parole or institutional experiences and how recent they were;
9. the availability of community and family resources to assist the applicant, including available training programs;
10. the circumstances of the person's offense, previous criminal record and all positive references and

recommendations submitted in behalf of the inmate as well as petitions or protests submitted by individuals or communities who are opposed to parole of a particular inmate;

11. noticeable changes in the inmate's behavior, self-concept, general attitude toward the offense, understanding of causal factors and a need for change;
12. the physical and emotional condition of the inmate, including written reports from psychiatrists, psychologists and related mental health persons, who may offer written or verbal testimony regarding a particular inmate; and
13. the inmate's concern for other people.

Given the criteria and the fact that the Board's final decision concerning the granting of parole is frequently based on an inmate's own presentations to the Board, it seems reasonable to conclude that inmates with skills in oral and written language have an advantage in satisfying the Board. The Board's expectations are complex and, in some cases, an inmate who is capable of mounting an inconspicuous lobby effort may have an advantage.

In an effort to compensate for of the human frailties involved in its decision making and provide a more objective base for its decisions, the Board instituted a "Risk Evaluation" form. This form contains factors which have been associated with the past performance of parolees. The intent behind the form is laudable; however, many of the criteria presently being included seem clearly discriminatory. Among the factors being included at the time data were collected for this study were:

- |    |   |                |
|----|---|----------------|
| 1. | Is s/he black?  | Yes = -1 point |
| 2. | Is s/he other than black,<br>white or Native?         | Yes = +1 point |
| 3. | Was the sentencing judge "4"?                         | Yes = +1 point |
| 4. | Was the sentencing judge "6"?                         | Yes = -1 point |
| 5. | Was s/he married or cohabiting<br>at time of offense? | Yes = +1 point |
| 6. | Is client separated at time of<br>release hearing?    | Yes = -1 point |

This document was being evaluated by the Board at the time of the study. Since Board members were not required to consider the information provided by the document, it is difficult to determine the amount of credence it was given in the final decisions of the Board. Perhaps the most significant conclusion to be reached after studying this instrument is related to its developer's understanding of what constitutes improper discrimination.<sup>4</sup>

### Conclusions

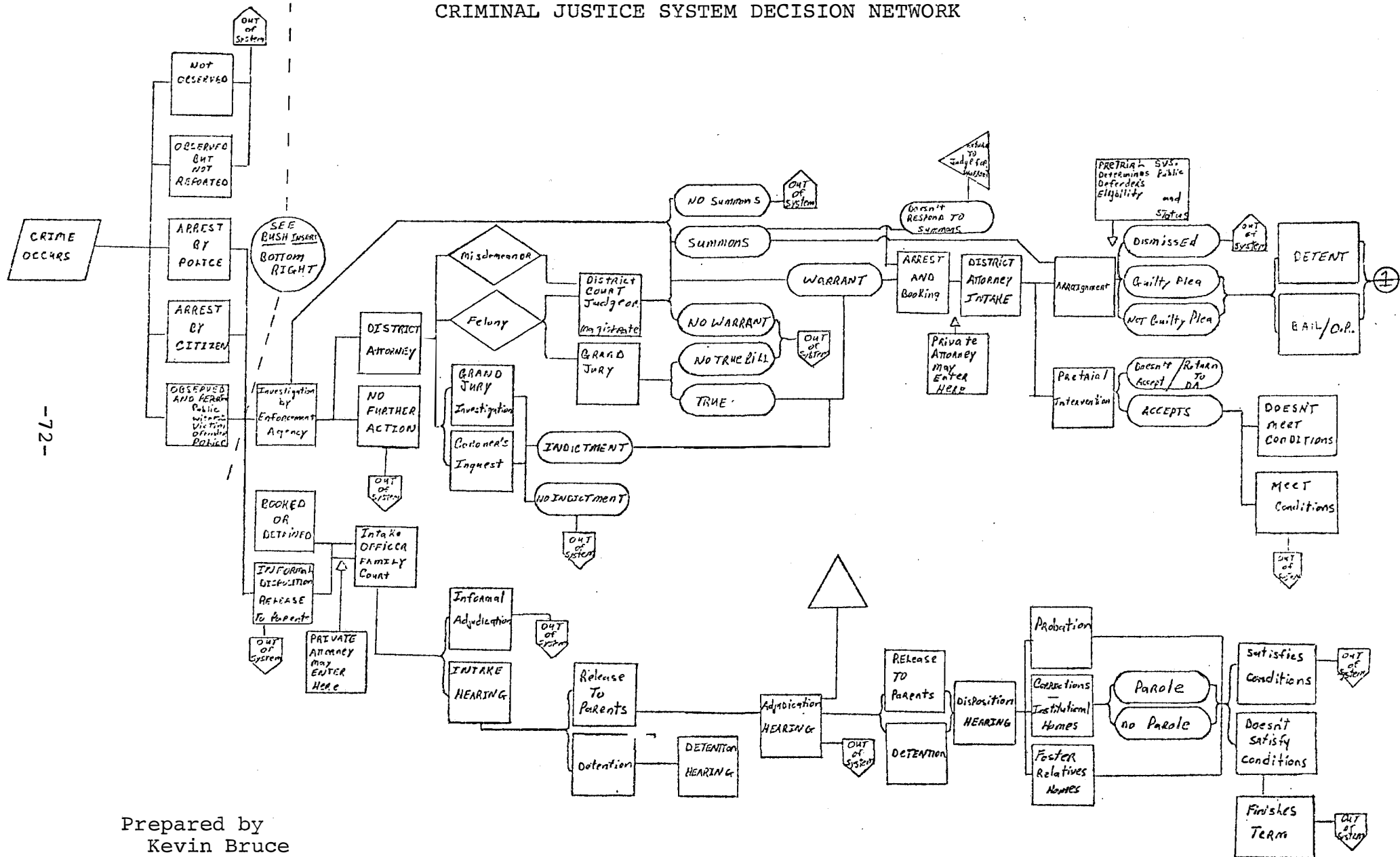
There are a substantial number of policies and procedures related to the corrections component of the Alaska criminal justice system. Based on this evaluation, several policy areas seem to have potential for discrimination. Among these areas are:

---

<sup>4</sup> The risk evaluation has been modified since the information for this study was obtained. However, this conclusion still seems valid. Further, after reviewing the new Parole Regulations initiated in September, 1980, we remain confident that the observations in this section are still accurate.

1. the policies concerning the allocation of correctional resources and services throughout the state;
2. the possibility of unchecked variations from the formal policies and procedures of the Division of Corrections;
3. the policy related to the confiscation and disposal of excess prisoner property;
4. policies related to communication rights of arrestees being detained for trial;
5. policies and procedures related to pre-sentence investigations and reporting;
6. procedures for guiding classifications of sentenced prisoners;
7. differences in institutional policies concerning prisoner rights to visitation, possession of cash, telephone use, educational opportunities, counseling and alcohol and drug programs; and
8. Parole Board policies and practices in general.

# APPENDIX A CRIMINAL JUSTICE SYSTEM DECISION NETWORK



Prepared by  
Kevin Bruce  
and Thomas Storey



